IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 4439 OF 1992
WITH
CIVIL APPLICATION NO. 252 OF 2006

Smt. Shashikala D. Vaidya .. Petitioner

Vs.

1. The Secretary,
Yeshwantprasad Popular Education
Society and ors. .. Respondents

None for the petitioner.
Mr. K.Y. Mandlik for Respondent Nos.1.
Mr. V.S. Gokhale, AGP for Respondent No.3.

WITH
WRIT PETITION NO. 207 OF 1997

Sau. Vaishali Virag Tilak .. Petitioner

Vs.

1. Yeshwant Popular Education
Society, Barsi and ors. .. Respondents

Mr. S.G. Kudle for petitioner.
Mr. K.Y. Mandlik for Respondent No.1.
Mr. V.S. Gokhale, AGP for Respondent Nos.2,3 and 5.

WITH
WRIT PETITION NO.6288 OF 2000

Sau. Pushpa Ambadas Mohite .. Petitioner

Vs.

1. Yeshwant Popular Education
society and ors. .. Respondents

None for the petitioner.
Mr. K.Y. Mandlik for Respondent No.1.
Mr. V.S. Gokhale, AGP for Respondent Nos.2 to 4.
Mr. S.G. Kudle for Respondent No.5.

CORAM : B. H. MARLAPALLE &
D. B. BHOSALE,JJ.

Date : APRIL 12, 2006.

ORAL JUDGMENT (PER B.H. MARLAPALLE,J.):-

1. All these three petitions have been directed to be heard together and, therefore, they are being decided by a common judgment.

2. In Writ Petition No.4439 of 1992 Smt. Vaidya, the petitioner, was superseded in the post of Headmistress of the Girls High School run by the respondent no.1-society i.e. Yeshwant Prasad Popular Education Society, Barshi and the said post was offered to respondent no.2 Smt. Pushpa Mohite who belonged to the backward classes and as per the roster the said post was reserved for the backward classes. Smt. Vaidya, therefore, approached the School Tribunal in Appeal No.15 of 1991 claiming that she being the senior most teacher, she was the first candidate to be considered for appointment to the post of Headmistress of the Girls High School. In the earlier round she had also filed Appeal No.205 of 1990 praying that nobody be appointed to the post of Headmistress of S.H.N.N. Shah Kanya Prashala, Barshi and for a direction for her promotion to the said post. The Management thereafter published an

advertisement in Dainik Sanchar on 3/12/1990 for appointment to the post of Assistant Teachers in the B.A.B.Ed. scale and these three posts were filled in by appointing one teacher from the open category and two teachers from the SC category, namely, Smt. Mohite and Smt. Bhalerao. The second appeal came to be dismissed by the School Tribunal on the ground that the post being reserved, an open category teacher could not claim the said post as a matter of right. The Tribunal further proceeded to observe that though the Management did not place before it the confidential reports of the appellant, the conduct and behaviour of the appellant was not normal. These observations, in our opinion, were uncalled for and in any case as has been admitted by the respondent-authorities in the returns filed in all the three petitions that the post of Headmistress, being a single post, could not be reserved. It is also clear that the respondent no.1-society does not run more than one Girls High School and, therefore, the claim of Smt. Vaidya for appointment to the post of Headmistress could not be brushed aside. As Writ Petition No.4439 of 1992 has been dismissed in default we do not deem it appropriate to set aside the order impugned therein and passed by the School Tribunal in Appeal No.15 of 1991 and in any case the

respondent-State authorities have accepted the legal position that the single post of Headmistress cannot be a reserved post.

3. In Writ Petition No.207 of 1997 Smt. Tilak, the petitioner, has claimed that she was required to be appointed for the post of Headmistress over the claim of the respondent no.4 - Smt. Mohite, more so the petitioner being senior to Smt. Mohite and that the single post of Headmistress could not be reserved for teacher belonging to the backward classes. In the affidavit filed by the Superintendent in the office of Education Officer (Secondary), Zilla Parishad, Solapur, it has been stated that the post of Headmistress fell vacant on 1/2/1991 and Smt. Mohite came to be appointed to the said post by following the 50 point roster for the SC category candidate. However, the Education Department did not grant approval to the appointment of Smt. Mohite initially as Assistant Teacher. Smt. Vaidya, the petitioner in W.P. No.4439 of 1992 came to be retired compulsorily and she had challenged the said order in Appeal No.91 of 1993. The said appeal was dismissed on 17/8/1995 by the School Tribunal at Pune and the said order came to be challenged in W.P. No.5510 of 1995. This petition was rejected summarily on 8/2/1996. Thus the

claim for the appointment to the post of Headmistress based on seniority has been raised by Smt. Tilak. The reply further states that Smt.Vaidya completed the age of 58 years on 31/5/1996 and thereafter the appointment of Smt. Mohite was approved in the post of Headmistress on 2/12/1996 but with effect from 1/6/1996. The respondent no.1 - Management lodged a complaint at Barshi Police Station under Sections 409, 420, 468 of IPC against Smt.Mohite for misappropriation of the amount collected by way of examination fees from the students. Smt. Mohite was arrested on 26/8/1996 and on the same day she was released on bail. In view of this criminal complaint, Smt. Tilak came to be appointed as In-charge Headmistress.

4. Smt.Mohite has filed Writ Petition No.6288 of 2000 and prayed for directions for her appointed to the post of Headmistress. From the farad-sheet it appears that Writ Petition No.6288 of 2000 has not yet been admitted. Be that as it may, we are required to consider the issue of appointment to the post of Headmistress in the Girls High School run by the respondent no.1-society at Barshi i.e. Saubhagyavati Hirbai Nensi Narsi Shah Kanya Prashala.

5. As noted earlier, the respondent-State authorities have clarified the position to decide the claim for promotion to the post of Headmistress and the said post being a single post in as much as the respondent no.1-society does not run more than one High School for girls, the post cannot be reserved in favour of a teacher belonging to the reserved classes and it will have to be offered to the senior most teacher subject to the service record being satisfactory and the qualifications and experience etc. Mrs. Tilak is holding the said post presently as the In-charge Headmistress and her appointment could not be approved by the respondent-authorities in view of the pending cases filed by Smt. Mohite including Writ Petition No.6288 of 2000.

6. In the premises Writ Petition No.207 of 1997 succeeds partly. We direct the respondent nos.2 and 3 to consider the seniority of the Assistant Teachers in the concerned School i.e. S.H.N.N. Shah Kanya Prashala at Barshi and approval shall be granted to the appointment of senior most teacher subject to the service record being satisfactory and no departmental proceedings pending against such a teacher. If the petitioner fulfils these requirements, the respondent nos.2 and 3 shall take steps to pass an appropriate

order granting approval to her appointment for the post of Headmistress within a period of one month from today. In case the present petitioner is not eligible for any reasons, the respondent no.1 shall take appropriate steps to fill in the post strictly on the basis of seniority and on the basis that it is not a reserved post, as expeditiously as possible and in any case within a period of three months.

7. W.P.No.6288 of 2000 is rejected summarily. Civil Application No.252 of 2006 does not survive and shall stand disposed off as such.

(D.B. Bhosale,J.) **(B.H. Marlapalle, J.)**